The Bipartisan Norwood-Dingell Bill Protects Patients; The Senate-Passed GOP Leadership HMO "Reform" Bill Fails Patients

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OVERVIEW

Bipartisan Norwood-Dingell Bill

On October 7, 1999, the House passed, by a 275-151 vote, the bipartisan Norwood-Dingell patient protection bill (**H.R. 2990**). Sixty-eight Republicans joined virtually all Democrats in support of the bill. The legislation covers every American with private insurance and provides solid, common-sense protections dealing with the most serious health insurance abuses--abuses like refusing to pay for emergency care even when a patient has symptoms of a heart attack or stroke, refusing seriously ill children and adults access to needed specialty care, and forcing patients to accept lower cost prescription drugs that do not meet their needs. The legislation provides a speedy, binding independent review of disputes between health plans and patients, and ends the current immunity from meaningful damages enjoyed by health plans that kill or injure patients. The bill is endorsed by more than 300 groups representing patients, doctors, nurses and other health professionals, as well as advocates for women, children, families, and the disabled. The Republican Senate bill, by contrast, is supported by no one but the insurance companies and their allies.

Senate Republican Bill

On July 15, 1999, the Senate passed, by a 53-47 vote, a Republican Leadership version of "patient protection" legislation (**S. 1344**). Two Republican senators joined all Democrats in voting against the bill. The Republican bill passed by the Senate excludes 113 million of the 161 million Americans with private insurance--more than two-thirds-- from most of its protections. Even for the minority of Americans who are covered by the bill, protections are far from adequate. Key provisions to ensure that doctors, not insurers, make medical decisions are omitted. Even where the Republican bill has sections that deal with the same abuses as the Norwood-Dingell bill, the provisions are typically little more than sham protections—too riddled with loopholes to actually help patients. The legislation maintains legal immunity from meaningful damages for health plans that kill or injure patients. The Senate bill is overwhelmingly opposed by groups representing patients, doctors, nurses, and other health professionals, as well as groups representing advocates for women, children, families, and the disabled.

Comparison of Provisions of Norwood-Dingell Bill and Senate-Passed GOP Leadership Bill

WHO IS COVERED

Bipartisan Norwood-Dingell Bill

_ All 161 million privately insured Americans are covered by the Norwood-Dingell bill.

Senate Republican Bill

× The Republican bill leaves more than 100 million privately ensured Americans--more than 2/3 of the total-- uncovered by most of the substantive provisions of the bill. Of an estimated 161 million with private insurance coverage, only 48 million would be covered. This is so because most substantive protections in the bill apply only to individuals enrolled in private, employment-based "self-funded" plans. A self-funded plan is one in which the employer pays medical bills directly rather than buying coverage from an HMO or an insurance company (although an insurance company may be hired to administer the program).

Typically, such self-funded plans are offered only by large companies. All state and local government employees, and people who buy health insurance as individuals (e.g., farmers, small businessmen, the self-employed) are excluded from the Republican bill, as are 75 million workers whose employers buy coverage through an insurance company or HMO.

Ironically, although the movement to pass a patients' bill of rights was inspired by HMO abuse, very few patients actually enrolled in an HMO would be covered by the Republican plan, since HMOs are only rarely offered under self-funded arrangements.

EMERGENCY CARE

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans (161 million).

_ Allows an individual who has symptoms that meet the prudent layperson standard to go to the nearest emergency room without preauthorization, and requires the insurance plan to cover the visit. The plan may not impose additional charges for use of a non-network facility.

_ Requires payment for maintenance and post-stabilization care according to rules already adopted for Medicare, which provide for the coordination of care between the managed care plan and the admitting hospital. These rules also protect beneficiaries against delays in needed treatment or additional charges if the HMO fails to respond to requests to authorize treatment in a timely way.

_ Permits denial to be appealed to an independent third-party reviewer.

_ Supported by the American College of Emergency Physicians.

Senate Republican Bill

× Covers only individuals in self-insured plans (48 million).

× Does not grant a right of appeal to an independent third party when a plan fails to cover or pay for emergency or post-stabilization services.

× Unclear whether it even ensures coverage under a "prudent layperson" standard, because of ambiguous language.

× Section on access to post-stabilization care contains a large loophole: if the plan does not respond to an emergency department in one hour, they have to pay for services to maintain stability— but those services are defined as services in theemergency department. Therefore, if a patient is transferred to another part of the hospital for post-stabilization care, the Republican bill would not require coverage for that care.

× Opposed by the American College of Emergency Physicians.

OBSTETRICIAN/GYNECOLOGISTS

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans.

_ Provides direct access to Obstetrician/Gynecologists for *all* OB/GYN services.

_ Supported by the National Partnership for Women and Families and the American College of Obstetricians and Gynecologists (ACOG).

Senate Republican Bill

- ✗ Covers only women in self-insured plans (less than 48 million).

- ✗ Does not require plan to allow direct access to OB/GYN, *except* for routine care. If a woman has an abnormal pap smear, she has to go through a gatekeeper to seek further treatment.

- ✗ Opposed by the National Partnership for Women and Families and the American College of Obstetricians and Gynecologists (ACOG).

ACCESS TO SPECIALISTS

Bipartisan Norwood-Dingell Bill

- _ Covers all privately insured Americans.

- _ Provides the right to specialty care if specialty care is medically indicated.

- _ Ensures no extra charge for the use of a non-network specialist if the HMO has no specialist in its network appropriate and available to treat the condition.

- _ Ensures that a specialist may act as care coordinator for patients with chronic, ongoing conditions.

- _ Permits decision to deny specialty care to be appealed to independent reviewer.

Senate Republican Bill

- ✗ Covers only individuals in self-insured plans (48 million).

- ✗ Provides no ability to go outside the HMO network at no extra cost if the HMO's network is inadequate.

- ✗ Allows the HMO to write contracts rendering the protection meaningless (e.g., specialty care is covered under the contract only when authorized by a gatekeeper). Essentially, this provision is a restatement of the status quo.

- ✗ Does not ensure that people with chronic conditions can use their specialist to coordinate their care.

- ✗ Gives no right to appeal an HMO decision to deny care by an appropriate specialist to an independent third party.

REQUIREMENT FOR PLANS TO PAY ROUTINE DOCTOR AND HOSPITAL COSTS OF CLINICAL TRIAL

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans.

_ Covers clinical trials for all serious illnesses when standard treatment is ineffective.

_ Ensures that a denial of a needed clinical trial can be appealed to an independent reviewer.

_ Supported by all major cancer and disease groups.

Senate Republican Bill

× Covers only individuals in self-insured plans (48 million).

× Covers only cancer clinical trials—leaves out patients with mental illness, spinal cord injury, Parkinson's disease, Alzheimer's disease, diabetes, and other serious conditions (only 1/3 of clinical trials are for cancer). Overall, only 10 percent of patients eligible to enroll in clinical trials would receive any coverage.

× Does not provide a right to appeal an HMO's denial of coverage for a needed clinical trial.

× No cancer groups supported the Senate GOP provisions on clinical trials when they were offered as an amendment on the Floor; the American Cancer Society, National Breast Cancer Coalition, National Alliance for Mentally Ill, and many other groups opposed them.

ACCESS TO NEEDED DRUGS NOT INCLUDED IN PLAN LIST (Formulary)

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans.

_ Prohibits HMOs from charging more for medically necessary off-formulary medications.

Senate Republican Bill

- ✗ Covers only individuals in self-insured plans (48 million).

- ✗ Allows HMOs to financially penalize patients who need to obtain medicine not on an HMO's approved list (formulary), even when it is medically necessary.

POINT OF SERVICE OPTION

(*requires employees to be offered at least one plan that allows them to go outside an HMO's provider network to the doctor of their choice*)

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans, including those in small businesses.

Senate Republican Bill

- ✗ Covers only individuals in self-insured plans (48 million).

- ✗ Grants additional specific exclusion for small businesses with 50 or fewer workers.

- ✗ Leaves out almost all individuals who do not have a point-of-service option available, since HMOs are rarely offered under self-insured arrangements and since small businesses are those most likely not to offer employees a choice of health plans.

CONTINUITY OF CARE FOR PATIENTS

(when a doctor is dropped from a network or an employer changes insurance plans)

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans.

_ Provides a transition period of 90 days for all patients who are undergoing treatment for serious illnesses when the change occurs (e.g., patients having chemotherapy or radiation therapy, cardiac rehabilitation following open heart surgery, psychiatric care, diabetes management, etc.).

_ Allows terminally ill patients to stay with the same doctor through the end of their lives; hospitalized patients can stay in the same hospital until discharge or hospitalization is no longer medically necessary.

_ Protects pregnant women.

Senate Republican Bill

× Covers only individuals in self-insured plans (48 million).

× Leaves out protection for all Americans who are not terminally ill, pregnant, or hospitalized (e.g., patients with cancer, chronic illnesses, or any other disease who are undergoing a course of treatment).

× Provides only 90 days protection to people in hospitals, potentially forcing those with longer stays to change doctors and hospitals in the middle of an inpatient hospitalization.

EXTERNAL APPEALS

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans.

_ Ensures that a state or federal agency controls the process for choosing the appeal entity -- not the insurer.

_ Ensures a de novo review -- a fresh look at the facts.

_ Ensures a reviewer's decision is based on a review of the best available medical evidence and the condition of the patient, not on the plan's definition of medical necessity.

_ Ensures that the decision of the independent reviewer is binding.

_ Permits all denials of care or payment for care that involve any element of medical judgement to be appealed to an external reviewer.

Senate Republican Bill

× Leaves out 38 million Americans, those in the individual market and those receiving coverage from State and local governments.

× Allows the HMO to choose and pay the appeal entity that decides the case.

- ✗ Allows the HMO or insurer to define medical necessity, tying the hands of the independent review entity and forcing them to follow the HMO's definition, no matter how narrow or unfair.

- ✗ Fails to provide for *de novo* review— a fresh look at the facts— placing a heavy burden of proof on the patient to overturn an HMO's decision.

- ✗ Fails to ensure a binding decision: the decision of a reviewer is binding "only if provisions… were complied with by the independent external reviewer." Allows HMOs to challenge a reviewer's decision in court.

- ✗ Does not provide an appeal when many rights under the bill are denied. For example, when emergency care is denied or access to clinical trials is denied, no appeal is allowed. The only situations in which an appeal is allowed are: when the plan has made the decision to deny care based on medical necessity (which the plan defines itself); and when the plan has defined a treatment as experimental and, on that basis, denied the treatment. The plan itself determines the basis for a denial and thus its eligibility for independent review.

- ✗ Jeopardizes protections for millions of Americans in states that have stronger external review laws.

ABILITY TO HOLD HMOs ACCOUNTABLE

Bipartisan Norwood-Dingell Bill

- _ Waives ERISA preemption of state remedies when the actions of an HMO have killed or injured a patient. Employers may not be sued unless they, rather than the insurance company or HMO, made the decision to deny care that led to the injury or death.

Senate Republican Bill

- ✗ Maintains existing Federal law protections for HMOs and insurers that injure or kill patients when they delay or deny care. Current federal law (ERISA) preempts State remedies. The only remedy under ERISA is recovery of the cost of the denied benefit. For example, if a patient is denied a mammogram and dies of breast cancer as a result, the only remedy available to the family is the recovery of the cost of the mammogram.

PROTECTION OF THE DOCTOR-PATIENT RELATIONSHIP

Bipartisan Dingell-Norwood Bill

_ Covers all privately insured Americans.

_ Prohibits plans from interfering with doctor-patient communications in any way.

_ Limits HMOs' financial incentive arrangements that penalize doctors for providing quality care (incorporates Medicare rules).

_ Prohibits plans from punishing health professionals who advocate for patients in appeals process or report quality problems.

Senate Republican Bill

× Applies only to those in self-insured plans (48 million).

× Prohibits plans from forbidding doctors to discuss treatment options with patients.

× Does not ensure that doctors can talk about the HMO's financial incentives or its processes for determining whether it will approve care.

× Does not include additional measures needed to make a prohibition on gag clauses meaningful, since HMOs can continue to:

(1) establish financial incentives that penalize a doctor for prescribing expensive care or making referrals to needed specialists; and

(2) penalize doctors and other health professionals who advocate for patients in the appeals process or report quality problems.

INFORMATION

Bipartisan Norwood-Dingell Bill

_ Covers all privately insured Americans.

_ Requires consumer information up front on specific benefit exclusions, and requires timely notification when benefits change.

Senate Republican Bill

- ✘ Excludes 38 million people with individual insurance policies or coverage from a state or local government plan.
- ✘ Does not require plans to tell patients when their benefits change.
- ✘ Does not require plans to tell patients up front the specific benefits excluded from coverage.